

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

326 ASSOCIATES, L.P.,)	
a Delaware limited partnership,)	
)	
Plaintiff,)	
)	
v.)	C.A. No.
)	
RETURNSIDE, LLC,)	
a Delaware limited liability company,)	
)	
Defendant.)	

COMPLAINT

PARTIES

1. Plaintiff 326 Associates, L.P. (“326 Associates”) is a limited partnership company duly organized and existing under the laws of the State of Delaware.

2. Defendant ReturnSide, LLC (“ReturnSide”) is a limited liability company duly organized and existing under the laws of the State of Delaware.

SUBJECT MATTER JURISDICTION AND VENUE

3. This action is brought pursuant to the Anticybersquatting Consumer Protection Act (“ACPA”), 15 U.S.C. §1125(d). As such, subject matter jurisdiction is conferred upon this Court pursuant to 28 U.S.C. §1331.

4. ReturnSide is a Delaware limited liability company subject to service of process in Delaware pursuant to 6 *Del. C.* §18-105. As such, venue is proper in this Court pursuant to 29 U.S.C. §1391.

FACTUAL BACKGROUND

5. Since 1983, 326 Associates has consistently owned and operated the New Castle Farmers Market located in New Castle, DE. Over the years, the New Castle Farmers Market has

become an institution in Delaware, and the name has generated goodwill throughout the state and beyond.

5. On June 7, 1993, 326 Associates registered the Service Mark “New Castle Farmers Market” with the Delaware Secretary of State. In 2007, 326 Associates renewed that mark.

6. On or about May 17, 2003, ReturnSide registered the domain name www.newcastlefarmersmarket.com. On information and belief, ReturnSide has in the past placed advertising on a site under that domain.

7. In 2007, 326 Associates planned to set up an Internet website, to promote the New Castle Farmers Market and to offer vendors who lease space at the New Castle Farmers Market an opportunity to advertise their wares.

8. Upon learning that ReturnSide had registered the domain name www.newcastlefarmersmarket.com, representatives from 326 Associates contacted Glenn Petrucci, the owner of ReturnSide, to discuss his registration of the domain name. Mr. Petrucci informed 326 Associates that his intention was to market use of a website under that domain name to vendors who sell their wares at the New Castle Farmers Market.

FIRST CAUSE OF ACTION

(Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. §1125(d))

9. 326 Associates re-alleges and incorporates herein the allegations contained in numbered paragraphs 1-8 above.

10. 326 Associates is the developer and owner of the distinctive service mark “New Castle Farmers Market.”

11. At the time that ReturnSide registered the domain name www.newcastlefarmersmarket.com, the phrase “New Castle Farmers Market” had become famous.

12. The domain name www.newcastlefarmersmarket.com is identical to the service mark “New Castle Farmers Market.”

13. By establishing the domain name, ReturnSide operated in commerce, as it precluded 326 Associates from offering services under that domain name.

14. ReturnSide registered the domain name www.newcastlefarmersmarket.com in bad faith, as it intended to market space on the website to vendors associated with the New Castle Farmers Market, thereby trading on the good will built up in the mark by 326 Associates.

15. ReturnSide and its owner Glenn Petrucci have registered or acquired multiple domain names which are identical or confusingly similar to the distinctive names of other existing businesses.

16. ReturnSide’s conduct was and remains wilful.

WHEREFORE, for the foregoing reasons, plaintiff 326 Associates, L.P. requests that judgment be entered in its favor, and against defendant ReturnSide, LLC, and that the Court enter an Order:

1. Requiring ReturnSide, LLC to transfer title to domain name www.newcastlefarmersmarket.com to 326 Associates, L.P.;

2. Awarding statutory damages, pursuant to 15 U.S.C. §1117(d), of no less than \$1,000 and no more than \$100,000, as the Court deems just;

3. Awarding plaintiff its costs, including reasonable attorney’s fees pursuant to 15 U.S.C. §1117(a); and

4. Granting such other and further relies as the Court deems just.

Dated: September 4, 2008

/s/ David L. Finger

David L. Finger (DE Bar ID #2556)

Finger & Slanina, LLC

One Commerce Center

1201 Orange Street, Suite 725

Wilmington, DE 19801-1155

(302) 884-6766

Attorney for plaintiff 326 Associates, L.P.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

326 Associates, L.P.

(b) County of Residence of First Listed Plaintiff New Castle

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

David L. Finger, Finger & Slanina, LLC, One Commerce Center,
1201 Orange Street, Suite 725, Wilmington, DE 19801-1155**DEFENDANTS**

ReturnSide, LLC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input checked="" type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. Section 1125(d)Brief description of cause:
Anti-cybersquatting case**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

09/04/2008

/s/ David L. Finger

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____